

## CONSTITUTION AND FLAG.

SOLICITOR-GENERAL RICHARDS SAYS  
THEY GO TOGETHER.

The Flag Flies in the Philippines and Porto Rico. He Says, as the Symbol of the Sovereignty of the Republic Over Newly Acquired Territory Which the Constitution Imparts to the Regulation and Disposition of Congress. Attorney-General Griggs Closes.

WASHINGTON, Jan. 10.—The argument of the Porto Rican tariff case was resumed in the Supreme Court today. Solicitor-General Richards continued his address begun yesterday. He referred to the suggestion made yesterday by Justice White that there was a difference between the territories in which there are governments organized and the territory—the disposition of which is given to Congress by the Constitution. He did not recognize, he said, that when a government was organized by Congress its power over it ceased. The Government's claim that it newly acquired territory does not become part of the United States until so ordered by Congress.

Resuming the thread of his argument where broken by adjournment yesterday, the Solicitor-General quoted from the decision in the early case of Hepburn vs. Elzey, when Chief Justice Marshall said: "The word State is used in the Constitution as designating a member of the Union."

The uniformity clause in the Constitution relating to the imposition of duties and excises, he said, was a geographical limitation to the several States comprising the Union. The provisions relating to interstate commerce, naturalization, and bankruptcy laws were also limited in their original intent, as stated by Madison in the *Federalist* to the States.

Mr. Richards quoted Chief Justice Marshall's declaration in the case of Insurance Company vs. Carter that while admiralty jurisdiction can be exercised only by Congress, Article III of the Constitution, "the same limitation does not apply to the Territories." And this doctrine, he said, had been approved by a long line of cases, including some of recent date.

Coming then to the question, "Are there, then, no limitations on this plenary power of congress to govern the Territories?" the Solicitor-General again admitting that there are such limitations, said:

Both the President and Congress concede, as I understand it, that they have no power except under the Constitution, and that they are subject in the exercise of their power to every limitation properly applicable. The Constitution and the flag go together. Whenever the flag flies as a symbol of the sovereignty of this country it is held by an authority created by and existing under the Constitution.

The flag now flies in the Philippines by virtue of the war and temporary power of the United States over that portion of the territory. It was raised in Porto Rico under the same authority. It waves there now as the symbol of the sovereignty of the Republic over the newly acquired territories, and the Constitution expressly intrusts to the regulation and disposition of Congress. The Constitution is in full force in the Philippines. It is not in the Philippines, but not all of its provisions. Only those provisions operate in those new possessions which the framers of the constitution intended should operate.

The Constitution uniting the people of the States, possesses and exercises dominion over the Territories, subject only to the implied restrictions and limitations of the Constitution.

All the provisions of the Constitution do not, and cannot, have uniform operation both within the States and Territories, with the exception of those which relate to the governing body are as widely different. It is true that every part of the national domain is within the jurisdiction of the Constitution, but the jurisdiction of the various parts is subjected to all its provisions.

In legislating for the Territories Congress is not limited in creating guarded national power, but only by the limitations of the general government of a State government. But there are limitations which apply to Congress in exercising the territorial power.

As the Solicitor-General said, referring to a question by Justice Brown, that the court would have to categorically set forth what would be done.

Mr. Justice Brewer, in his opinion in *Ann Arbor*, addressed, which had been brought before the court in a supplemental brief filed by Mr. Adriance in the case of *Torren*, that money may be laid out more than in that address, he said, the author had presented a possible law that could be passed by Congress, that would be in accordance with the Constitution.

The position of the government in these cases was correct. One of the sections quoted provided that any Porto Rican taxes or assessments levied by Congress, neither do I care to categorically enumerate all the outrages that may be committed by the Spanish, nor do I care to categorically enumerate all the outrages that may be committed by the government in these cases.

Justice Brewer raised a general query by asking, "What would be the criticism upon the purpose of that legislation?"

Mr. Richards—I don't know that there is, but I am sure of its general uniformity.

The Solicitor-General closed with the following:

not to be taken as a general policy or principle. That article of the treaty of cession of Porto Rico does not give the Spanish possession of the parts of that territory for a term of ten years. This was done, said Secretary Adams, upon the understanding that London would not grant a separate from and not a part of the United States.

Another point of importance in the historical consideration of the creation of territories is the fact that North Carolina ceded the territory belonging to her to the United States, not a part of the States, but territory belonging to the United States.

This was agreed to, he said, by a deed which the United States accepted in full. The language of the deed forced the acceptance, said the Attorney-General, of those who signed it and those who received it, recognizing a distinction and a difference between the status of the United States and the territories belonging to and not to the citizens of the United States and the residents of the territory.

Recently, continued the Attorney-General, he had read a paper published by Thomas R. Bent in 1873 entitled "Historical and Legal Examination of the Freed Slave Case," which he said, contained the views of Mr. Bent, who was a friend of his, upon the constitutionality of the constitution. Mr. Bent said the parties to the territories, after the adoption of the Federal Convention, their citizens adopted it in the State conventions. The Northwest Territories was then in existence, and the territories had no voice either in the framing or adopting of the instrument, my delegate at Philadelphia not submitting it to their will for adoption. The territories, as far as the states are concerned, and for the States, territories are not allowed to it.

The body of the instrument shows the same thing, every clause except one, that is, the clause concerning the territories, contains a provision making them distinct and the word territories occurring but once, and that at a place, as submitted to the convention, as it stands now, you never sell a territorial government, but you sell property, and in that sense alone does the word territories appear in the instrument.

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After about half an hour's reading, which was intended to with very close examination of the paper, Mr. Teller moved to adjourn, and to the suggestion that the paper had been all read, whereupon Mr. Teller had unanimous consent that it should be printed as it stands.

"Object," Mr. Hawley exclaimed, with a show of angry resentment, "is it a treasonable attempt to bring into the Government and into the service of our country?"

Mr. Benton, too, called attention to the fact that the paper had not all been read, and its reading was resumed and continued.

Mr. Teller renewed his request for the printing of the paper as a Senate document, and Mr. Hawley moved to adjourn. Thereupon Mr. Teller said he would make the motion after the meeting hour.

Mr. Teller then moved to adjourn for the printing of the paper as a Senate document, which body can review the proceedings and restore the officer if it finds the cause for removal was not sufficient.

Senator Humphrey introduced a bill prohibiting associations from associating themselves with the institution, and the report says, "no criminal or political associations" can be formed.

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